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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

CAESARS WORLD, INC. and PARK PLACE  
ENTERTAINMENT CORPORATION,

Plaintiffs,

Vs.

CYRUS MILANIAN, and THE NEW LAS  
VEGAS DEVELOPMENT COMPANY, L.L.C.,

Defendants.

Civil Action No.: CV-S-02-1287-RLH (RJJ)

**PLAINTIFFS' REPLY MEMORANDUM  
IN FURTHER SUPPORT OF THEIR  
APPLICATION FOR ATTORNEYS'  
FEES**

**PRELIMINARY STATEMENT**

Plaintiffs Caesars World, Inc. ("CWI") and Park Place Entertainment Corp. ("PPE") submit this reply memorandum in further support of their application for an order awarding attorneys' fees and non-taxable expenses in the total amount of \$316,984.68, representing \$316,089.80 in fees and \$894.88 in costs. Plaintiffs have already established their right to this award; thus, the only issue remaining is a determination of the amount to be awarded. In his April 8, 2002 opposition that was never served on Plaintiffs, defendant Cyrus Milanian advances various meritless arguments in an attempt to convince the Court that the fees and costs expended by Plaintiffs were excessive. The

1 Court should reject those arguments and award the fees and costs sought by Plaintiffs.

2 **ARGUMENT**

3 **A. The Court Should Reject Milanian's Contention That The Trial In This Matter Was**  
4 **Unnecessary.**

5 Milanian contends that because his counsel had mentioned during his opening that Milanian  
6 would agree to an injunction, the trial of this matter was unnecessary. That contention ignores the fact  
7 that Milanian never agreed to accept judgment on any of Plaintiffs' claims brought under the Lanham  
8 Act and argued in his post-trial submissions that he had no liability on any of Plaintiffs' claims.  
9 Indeed, as evidenced in his answer, motion for summary judgment, motion to stay the proceedings,  
10 pre-trial findings of fact, conduct during the trial, and post-trial submissions, Milanian consistently  
11 denied liability on all of Plaintiffs' claims, including the claims that Milanian violated the Lanham  
12 Act. In the end, Plaintiffs had to try this matter to vindicate their rights and obtain judgment in their  
13 favor. As a result, the Court issued a permanent injunction against Milanian's ongoing infringement,  
14 ordered Milanian to transfer certain domain names, and that certain of Milanian's trademark  
15 applications be cancelled. (February 19, 2002 Conclusions of Law ¶¶ 118-31). The only way for  
16 Plaintiffs to have obtained such relief was through a trial on the merits. Thus, even if had he agreed to  
17 permanent injunction on certain issues, there still would have been a trial on the merits.

18 Despite contesting liability before, during and after the trial, Milanian pins his argument on a  
19 single sentence in the transcript in which his attorney indicated that Milanian would consent to an  
20 "injunction as to the trademark issues." As noted above, even if this had been a *bona fide* offer of a  
21 permanent injunction, Plaintiffs would have had to go forward with the trial for the other relief on  
22 their Lanham Act and unfair competition claims.<sup>1</sup> Moreover, that statement was made on the heels of  
23 Milanian's January 21, 2003 motion to stay this matter. In that motion (and to counsel beforehand),  
24 Milanian represented that he would agree to a *preliminary injunction* and argued that the matter should  
25 be stayed until resolution by the Trademark Trial and Appeal Board. (See Milanian January 21, 2003  
26 Stay Motion at 5). Such an offer obviously did not afford Plaintiffs the relief they sought and  
27

28 <sup>1</sup> Given that Milanian made repeated attempts to adjourn the trial and reneged on the settlement agreement, Plaintiffs were legitimately wary of any representation on what Milanian would agree to in order to get the trial adjourned. Moreover, as discussed herein, there was no indication that Milanian had offered to consent to a *permanent* injunction.

ultimately obtained at trial. Moreover, given Milanian's same-day offer to agree to only a preliminary injunction, his counsel's comment at the start of trial did not even signal that Milanian was willing to enter into a permanent injunction.

The fact that Milanian never consented to judgment in Plaintiffs' favor on Counts 1-5 of the Complaint and the relief sought by Plaintiffs, and opposed entry of judgment on any of those claims even in his post-trial submissions demolishes his claim that the fees and costs expended by Plaintiffs during and after the trial were unnecessary.<sup>2</sup>

**B. Milanian's Other Arguments That Plaintiffs' Fees and Costs Were Excessive Are Without Merit.**

Milanian also argues that the attorney fees were excessive because: (1) the trial took place only four months after Plaintiffs filed the Complaint and "procedural advantages" should have produced substantial savings; (2) the matter did not require specialists in trademark law; and (3) the firms involved used too many timekeepers and some of the work was duplicative. None of those arguments hold water.

**1. The Length of the Proceeding.**

Milanian asserts that the short time between the filing of the Complaint and trial, as well as the lack of discovery, means that the fees of Plaintiffs' counsel were excessive. Notably, Milanian does not specify in what way they were excessive or the specific tasks that should not have been undertaken by Plaintiffs' counsel. Milanian also ignores the fact that he contested nearly every allegation made by Plaintiffs, thereby forcing them to review thousands of documents concerning: (a) CWT's use of the COLOSSEUM and EMPIRE trademarks since 1966; and (b) Milanian's trademark applications and his practice of applying for trademarks without a *bona fide* intent to use. The latter effort was even more time consuming because Milanian failed to appear for his deposition, which deprived Plaintiffs of the opportunity to narrow the disputed issues before trial. Ultimately, Plaintiffs' counsel designated nearly 600 exhibits for the trial and introduced approximately 350 of them into evidence.

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<sup>2</sup> If, as Milanian suggests, he was willing to offer judgment on Counts 1-5 of Plaintiffs' Complaint, then he was free to serve Plaintiffs with an offer of judgment under Rule 68. If Milanian had submitted such a pleading before the trial started, his argument might have some merit. But having denied liability, he cannot now be heard to complain that trial on these issues was unnecessary.

1 Plaintiffs reasonably believed that the exhibits were necessary in order to meet their burden at trial.

2 As a result of Milanian's decision to contest liability and deny most of the factual allegations,  
3 Plaintiffs were also forced to prepare extensive proposed Findings of Facts and Conclusions of Law,  
4 which were submitted to the Court before the start of trial. Such pretrial submissions were needed in  
5 light of the disputes between the parties. Although he asserts that there was unnecessary work given  
6 the duration of the matter, Milanian has not identified any aspect of the trial preparation that was  
7 unreasonable.

8 Plaintiffs also noted that they attempted to avoid the trial by having the Court enforce  
9 settlement to which Milanian had agreed.<sup>3</sup> While Milanian successfully defended against that motion,  
10 he can hardly be heard to complain that the fees expended to settle the matter and enforce the  
11 settlement agreement were excessive. Milanian also filed several motions immediately before the start  
12 of trial: to stay the matter and for the Court to reconsider its decision that barred Milanian from  
13 testifying. Plaintiffs were forced to respond to those motions.<sup>4</sup>

14 During and after the trial, Milanian could have contacted Plaintiffs and stipulated to many facts  
15 established at trial or agree to some (if not all) of the legal conclusions. But he made no effort to  
16 narrow the issues even after the trial, which caused Plaintiffs' counsel to expend time reviewing the  
17 trial transcripts, and exhibits to prepare the post-trial Findings of Facts and Conclusions of Law.

18 After some general criticism, Milanian ultimately resorts to a jejune equation that Plaintiffs  
19 spent \$100,000 for each trial day. That statement says nothing about the reasonableness of Plaintiffs'  
20 request and does not further his argument that the fees expended by Plaintiffs' counsel were excessive.  
21 As shown above and in Plaintiffs' initial submission, the fees expended were reasonable, especially  
22 given that Plaintiffs faced an intractable defendant, who would not concede any significant legal or  
23 factual issues.

24 . . .

25 . . .

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26  
27 <sup>3</sup> As indicated in the time records submitted by Plaintiffs, trial preparation work was suspended on January 16, 2003 once  
the settlement had been reached. It was only after Milanian advised that he would not sign the Settlement Agreement  
denied Plaintiffs' request to enforce the settlement, that Plaintiffs' counsel resumed trial preparation.

28 <sup>4</sup> Had the Court granted any of Milanian's requests to adjourn the trial, it would almost have certainly increased the fees  
ultimately expended by Plaintiffs.

1     2.     The Novelty And Difficulty Of The Issues.

2             Plaintiffs find it ironic that Milanian asserts that “all of the key issues were not trademark  
3 issues” after having retained Gregory Buhyoff, a Nevada-based counsel specializing in trademark law,  
4 and Melvin Silverman, a New Jersey-based attorney specializing in intellectual property law, to  
5 represent him in this matter.<sup>5</sup> Milanian’s characterization of the case as principally “procedural” is  
6 wrong. The substance of Plaintiffs’ motion for a preliminary injunction, Milanian’s “motion” for  
7 summary judgment, his motion to stay pending a “decision” by the TTAB, and the parties respective  
8 proposed Findings of Fact/Conclusions of Law (pretrial and post trial) all disprove such an assertion.

9             The conduct of the trial of the matter is further proof that the case was principally a trademark  
10 case. It involved testimony by witnesses that went to trademark issues, such as common law rights,  
11 genericism, priority of use, and Milanian’s conduct in filing applications both with respect to  
12 Plaintiffs’ marks and others. Milanian does not dispute that construction of the *bona fide* intent to use  
13 requirement is novel or that Plaintiffs’ counsel’s need to review and present the legislative intent  
14 behind that provision of the Lanham Act was somehow unnecessary. Rather, he argues that the fact  
15 that his counsel cited no legal authority on certain issues means that the fees of Plaintiffs’ counsel  
16 were excessive. Not only is that conclusion illogical, but Milanian again fails to point out a specific  
17 time entry that he believes to be excessive.

18             Milanian next levels a scurrilous and factually baseless charge that the inaction of Plaintiffs and  
19 their counsel “made those proceedings necessary.” Milanian’s unstated premise is registration of the  
20 COLOSSEUM mark would make Plaintiffs less vulnerable to claims from opportunists like Milanian.  
21 His attack on Plaintiffs and their counsel ignores that CWI had longstanding common law rights in the  
22 COLOSSEUM mark and the finding that Milanian applied to register the mark without a *bona fide*  
23 intent, but rather to use his “rights” as a bargaining chip in negotiations with Plaintiffs. (February 19,  
24 2003 Findings of Fact ¶63). Even after he was told about Plaintiffs’ rights, Milanian persisted in his  
25 claim that he had superior rights or the mark was generic. Thus, the trial of the matter can hardly be  
26 the result of Plaintiffs’ “mismanagement.” Rather, a trial was caused by Milanian’s willful conduct in  
27

28     <sup>5</sup> Having retained Mr. Silverman’s firm, Milanian cannot claim that it was unreasonable for Plaintiffs to retain out-of-state trademark counsel.

1 applying for registration of a common law mark owned by CWI with an improper motive, and  
2 refusing to concede after being told of Plaintiffs' common law rights.

3 Milanian's attack on Mr. Feingold is equally meritless. PPE and CWI engaged Mr. Feingold as  
4 outside trademark counsel barely a year before this trial took place. Thus, contrary to Milanian's  
5 contention, Mr. Feingold was in no position to advise Plaintiffs over the past 36 years to register the  
6 mark. Indeed, by the time Plaintiffs retained Mr. Feingold's firm, Milanian had already launched his  
7 scheme by filing the April 2001 application to register COLOSSEUM as a trademark. Although  
8 Milanian hints that Mr. Feingold was not experienced, he has not questioned any of the facts submitted  
9 about his background or his expertise in trademark law. He simply concludes (incorrectly and without  
10 facts) that the failure to register the COLOSSEUM mark some time shows that Plaintiffs' current  
11 trademark counsel are inexperienced. That conclusion is wrong.

12 Milanian also fails to show that use of experienced trademark counsel was not necessary. As  
13 stated above, he retained his own intellectual property counsel. As set forth in Plaintiffs' moving  
14 papers, courts will consider reasonable requests for fees for specialist counsel. *See Puckett v. Yamhill*  
15 *County, et. al.*, 145 F.3d 1340, 1341 (9<sup>th</sup> Cir. 1998); *Ford Motor Co. v. Kuan Tong Industrial Co., Ltd.*,  
16 697 F.Supp. 1108, 1110 (N.D.Ca 1987). Here, Milanian makes no showing that the hourly rate  
17 charged by Pitney, Hardin firm for Mr. Feingold and Mr. Brown exceeded the rate for comparable  
18 counsel in the New York area. Accordingly, the Court should reject his request to cap the hourly rate  
19 for Mr. Feingold and Mr. Brown at \$300 per hour.

20 3. Plaintiffs' Staffing Of The Case.

21 Milanian's claim that the staffing was excessive is refuted by looking at the time records and  
22 by the fact that Milanian himself retained three firms and had as many as 4 attorneys attend the trial.  
23 As set forth in the Feingold Affidavit, the Pitney Hardin firm had two partners (Stephen Feingold and  
24 Richard Brown, both of whom tried the matter), one associate (Kathy Critchley) and one paralegal  
25 (Katherine Dominus) work on the case before the trial began.<sup>6</sup> Not until it was clear that the matter  
26 would proceed to trial did the Pitney, Hardin firm bring in another associate, Brian Friel, principally to  
27

28 <sup>6</sup> As noted in the Feingold Affidavit, there was some extremely limited pretrial involvement of others from Pitney, Hardin:  
Frederick Whitmer (a partner), Joanna Steinberg (an associate), and Anna Lisnyansky (a paralegal). The reasons for that  
involvement are set forth in the Feingold Affidavit.

1 work on briefing and other issues that arose. A staff of three attorneys and a paralegal, with an  
2 associate attorney added for assistance for the trial is not excessive, especially given the volume of  
3 documents, disputed factual issues, need to respond to last-minute motions by Milanian.

4 As indicated in the Goodheart Affidavit, Mr. Goodheart handled most of the work of Plaintiffs'  
5 local counsel, Jones Vargas. As the trial date approached, Mr. Goodheart enlisted the assistance of  
6 Patrick Rose to work with Plaintiffs' lead counsel as to various trial requirements including providing  
7 the Court with Proposed Findings of Fact and Conclusions of Law, an Exhibit List and trial exhibits,  
8 and a Witness List to attend two days of trial as Mr. Goodheart would be out of town during those two  
9 days; and to assist with some post-judgment briefs and issues. The other four timekeepers from Jones  
10 Vargas, (whose combined time totaled 10.1 hours) primarily handled issues that arose during the trial  
11 (while Patrick Rose was in trial, and Gary Goodheart was out of town) including research and briefing  
12 as to Milanian's counsel's ex parte contact with a former president of Caesar's World, Peter Boynton,  
13 and research regarding a trademark serving as a promise. Milanian does not object to anything  
14 specific in the billings of Plaintiffs' local counsel, Jones Vargas, and the fees and staffing were  
15 reasonable as explained in the Goodheart affidavit.<sup>7</sup>

16 For his part, Milanian retained at least four lawyers from three different firms to appear at trial:  
17 Mr. Silverman, Mr. Buhyoff and Andras Babero. In addition, Michael Santucci, one of Mr.  
18 Silverman's associates, also appeared in the courtroom and indicated at one point that others at Mr.  
19 Silverman's Florida office were working on the matter. (See January 22, 2003 Tr. at 373). The fact  
20 that Milanian retained three firms completely undercuts his assertion Plaintiffs used too many  
21 attorneys. Given those facts, as well as Milanian's intransigence, the nature of issues involved, and  
22 the stakes for Plaintiffs, it was entirely reasonable for Plaintiffs to retain both experienced Nevada  
23 counsel and trademark attorneys.

24 Finally, Milanian argues the work by Plaintiffs' counsel was duplicative and excessive, but  
25 offers no specifics on the individual work, such as the entries that he believes were duplicative, the  
26 conference calls that were too long, which project took too much time, or the work should have been  
27

28 <sup>7</sup> Even if Milanian's claim that Plaintiffs' in-house counsel did not "manage" the litigation were accurate (which it is not),  
he still does not identify how "better management" would have reduced fees.

1 done by a more junior person. Although Plaintiffs provided detailed timekeeper information, which  
2 would have allowed Milanian to analyze the work done, he has not pointed out any specific entries  
3 that are excessive, duplicative, or improperly staffed. Accordingly, there is no principled basis to  
4 reduce the lodestar figures submitted by Plaintiffs. *See Caudle v. Bristow Optical Company*, 224 F.3d  
5 1014, 1029 (9<sup>th</sup> Cir. 2000) (district court required to “articulate with sufficient clarity” the manner in  
6 which it adjusts the lodestar figure); *Chandler v. Koon*, 996 F.2d 1223, 1229 (9<sup>th</sup> Cir. 1993) (strong  
7 presumption that the lodestar fee is appropriate).

8 **CONCLUSION**

9 For the foregoing reasons, the Court should award the amount of attorneys’ fees and costs  
10 requested by Plaintiffs.

11 DATED this 5<sup>th</sup> day of May, 2003.

12 **JONES VARGAS**

13  
14 By: 

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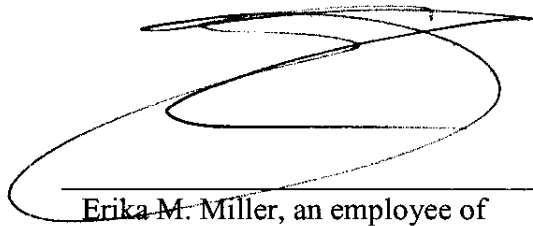


1 **CERTIFICATE OF MAILING**

2 I hereby certify that a copy of the foregoing **PLAINTIFFS' REPLY MEMORANDUM IN**  
3 **FURTHER SUPPORT OF THEIR APPLICATION FOR ATTORNEYS' FEES** was served upon  
4 the following person(s), at their last known address, by mailing a copy thereof, first class mail, postage  
5 prepaid, on this date, May 5, 2003, as follows:

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